



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/10134/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 15th June 2021**

**Decision & Reasons Promulgated
On 11th August 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MISS J Z M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Mughal, instructed by Amb Advocates

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant appeals against the decision of First-tier Tribunal Judge Davey, who dismissed the appellant's appeal on protection and human rights grounds when she appealed against the refusal of the Secretary of State on 9th October 2019 to grant the appellant asylum. The appellant is a national of the Democratic Republic of Congo ("DRC") born on 10th October 1982 and came to the UK in 2016. The judge found the appellant was a reliable and credible witness. Indeed, the appellant claimed that she had been raped and abused and her son killed by the security forces of Kabila but that there was no risk that this would be repeated and thus she was not at risk.

The grounds of appeal advanced that the judge did not refer to the specific evidence to support his findings, failed to consider the appellant is a vulnerable lone woman returning to the DRC and failed to address Article 3. The judge accepted that the appellant was ill-treated but failed to give reasoning for the finding that ill-treatment would not be repeated. The findings were contradictory and at 21 were not in line with the judge's own previous findings at 17. The judge did not take account of the appellant's previous persecution when making his findings and failed to take into account the current background/objective evidence that Kabila was involved with the present government. The grounds also stated the judge failed to take into account the current government situation in the DRC and findings needed to be made and there were no reasoned findings in relation to the appellant's mental health and Article 3.

At the hearing before me Mr Melvin attempted to withdraw the concession that the Secretary of State had made by way of letter on 13th August 2020 when stating that:

"The respondent does not oppose the appellant's application for permission to appeal in line with the grant of permission and the aspect of the appellant returning as a lone woman. The Tribunal are invited to determine the appeal with a fresh oral continuance hearing at the First-tier Tribunal."

Permission to appeal was granted by First-tier Tribunal Judge Saffer, who confirmed that it was arguable that the judge had given inadequate reasons to explain why the appellant would not be at risk on return to the DRC as a lone woman, having found that she had been raped by government forces and had a political profile, given the ongoing difficulties in the DRC.

At the hearing Mr Melvin attempted to withdraw the concession on the basis that there was no relevant evidence before the First-tier Tribunal. It is clear that the index of the appellant's bundle referred to the CPIN on gender-based violence and further I note that the Secretary of State's decision, which did consider the credibility of the appellant damaged, referred specifically to the Country Policy and Information Note: Gender Based Violence September 2018. I refused to allow this concession to be withdrawn as it was clear that the country background information note before the First-tier Tribunal Judge and no exceptional circumstances were raised before me such that the concession should be withdrawn.

I find that the decision discloses an error of law. The judge accepted the appellant was vulnerable and that she has experienced previous ill-treatment. At 17 he recorded: *"The appellant has shown that the rape ill-treatment she received was at the hands of the state, as it then was, was delivered with impunity and there was nothing to show on the evidence ... of a greater likelihood of protection of vulnerable women."* He then, however, found that she was not at any real risk of repetition of such ill-treatment without reasoning or explaining that finding and without referring to the background material in the face of having found previously by way of contradiction that Joseph Kabila

had “amassed extensive political clout”, paragraph 10, evidently subsequent to the ascendancy of President Tshisekedi. Thus, the reasoning was not deficient. The reasoning of the judge disclosed some contradiction between on the one hand, paragraphs 16 (finding that it was not surprising that she feared return to DRC) and 17 “there was nothing to show on the evidence that I was taken to of a greater likelihood of protection of vulnerable women, as I have found this appellant to be” and, on the other hand, paragraph 21 where the judge found that she had not shown a real risk of persecution. The judge did not consider the CPIN on gender-based violence despite its reference in the index of the appellant’s bundle and reference in the Secretary of State’s own decision letter.

Paragraphs 16 and 17 are preserved. Owing to the nature and extent of the findings which need to be made, including those on mental health, the matter will be remitted for redetermination to the First-tier Tribunal.

Notice of Decision

The Judge erred materially for the reasons identified. I set aside the decision (save that **Paragraphs 16 and 17 are preserved**) pursuant to Section 12(2) (a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Directions

The parties are to file and serve any further evidence together with skeleton arguments (no more than 10 pages of A4) at least 28 days prior to the substantive hearing in the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington

Date 2nd August 2021

Upper Tribunal Judge Rimington